

MINUTES
LIVESTOCK FACILITY SITING REVIEW BOARD
MEETING
January 18, 2008
Room 266, 2811 Agriculture Drive, Madison, WI

Chair Holte called the meeting to order at 10 a.m. LFSRB members present were Lee Engelbrecht, Andy Johnson (by phone), Bob Selk, Bob Topel, Fran Byerly, and Jerry Gaska. A quorum was present. DATCP staff present were Cheryl Daniels and Lori Price.

Call to order

Holte stated the meeting agenda was publicly noticed, as required, and then presented the agenda for approval. Engelbrecht moved to approve the agenda, and Selk seconded the motion. The motion passed.

Holte presented the November 16, 2007, meeting minutes for approval. Johnson moved to approve the minutes as written, and Byerly seconded the motion. The motion passed.

Approval of changes to LFSRB bylaws

Daniels reviewed the changes to the bylaws that were made at the November 16, 2007, meeting. Under the paragraph relating to submission of positions statements, Selk requested "1 response" be used to imply a response to a position statement rather than using "position statement" again. Also, the response should not be an opportunity to bring up new issues but to respond to the original position statement. Under the submission of amicus briefs section, board members agreed the amicus brief should not exceed 10 pages, and Daniels should act on the board's behalf when deciding if an amicus brief exceeds the proper page length and will not be accepted by the board. Daniels clarified the use of "any party" in the Statement of Position section and the use of "person" used in the Amicus Briefs section. The term "party" meant an aggrieved person, and the term "person" was the legal terminology used in the statute that covered multiple entities.

After the review of the changes to the bylaws, Johnson made a motion to accept the bylaw revisions as agreed to by LFSRB consensus at today's meeting. Selk seconded the motion. The motion passed.

Larson Acres, Inc. v. Town of Magnolia, Docket No. 07-L-01: case status—motion to dismiss, consolidation of cases, briefing schedule, and future board discussion with litigation attorney

Daniels reported that the Rock County circuit court judge ruled against dismissing the appeal in this case. The judge's reasoning was the LFSRB had not given proper notice of the board's final decision to everybody involved in the case. Proper notification of the board's decision would have allowed opportunity for parties to appeal the case in circuit court. Daniels commented the LFSRB decision was sent to the attorneys of the parties involved in the case but not to every single person who was involved with the case. Selk requested that in the future, people who file a statement of position and are not represented by counsel should receive a copy of the decision. Daniels also reported that another appeal was filed in this case so now there is a third one with a new court date.

There is still no briefing schedule set because the circuit has not yet reviewed these cases. Daniels stated that most likely the cases will be consolidated by the circuit court and hopefully be resolved by this summer. The LFSRB will probably not meet with Bob Hunter, DOJ legal counsel, until March or April at the earliest. Lastly, Daniels reported there was a recent news story that stated the Town of Magnolia did perform some monitoring and found that the wells in the area were in better shape than they had been, which meant the livestock siting law is working.

Board schedule and future agenda items

The meeting was running ahead of schedule so the LFSRB decided to move this item up on the agenda. Daniels reported that there may or may not be a February meeting depending on what happens with the Vernon County case.

Johnson asked if the LFSRB will receive a presentation on the annual livestock siting law report that will be presented to the ATCP board in May. Dave Jelinski, with DATCP, responded that staff would like to present this information to the LFSRB and also ask LFSRB members for their evaluation of the livestock siting law from the board's perspective. He will work with Daniels on including this item on the February or March meeting agenda. The discussion then turned towards if the LFSRB board should receive information on what happens with a case after the board makes a decision. Daniels suggested DATCP staff could present updates on the practical things that are happening with a case after the board makes a decision. Selk commented that the board has an interest with case appeals to circuit courts to find out if the LFSRB is doing something wrong in their decision making. However, he had reservations on knowing what is happening with the facility because the LFSRB should remain impartial. Jelinski commented the annual report will give the LFSRB a full breadth of the livestock facility siting program and how it is working.

After this item, the LFSRB took a lunch break

Mark and Jane Brothen, and Eugene and Jeanne Dubord v. Vernon County, Docket No. 07-L-02

Daniels reported that the LFSRB received a request for review of Vernon County's issuance of a manure storage permit and filing of a nutrient management checklist by the facility operator in lieu of filing for an application for a livestock facility. As the case unfolded, it became obvious the board was not dealing with a case where an actual livestock siting application was denied. Daniels sent out the notice of request for review that an appeal was filed and parties could file a position statement on whether the LFSRB had jurisdiction to hear this case. She received a number of responses on the merits of the case but is holding off giving them to the LFSRB members until they decide whether they have jurisdiction to hear this appeal.

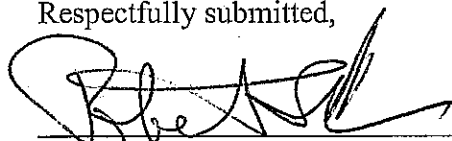
The LFSRB members discussed the timing of when the permit was issued versus the county's adoption of the livestock facility siting ordinance, the county's reasoning for issuing a manure storage permit versus requiring a livestock facility siting application, and the prior manure storage ordinance meeting the livestock facility siting ordinance standard on manure storage. At the request of the LFSRB, Daniels read the portion of the rule, ATCP 51, that stated under what conditions the board should review a case. The rule mentioned the board reviews decisions where a livestock facility siting application was involved. Board members discussed that since no application was done, they do not have jurisdiction in this case. Topel made a motion that without a livestock

facility siting application to review, the board has no grounds to make a decision in this case. Engelbrecht seconded the motion. The motion passed. Daniels stated she would communicate this decision to the parties involved. The board members recessed for 30 minutes while Daniels made changes to the order. After the recess, board members present at the meeting signed the order with one minor change of the word "county zoning" to "licensing" on Number 1 on page 3 in the order. Johnson will sign the order at a later date.

Adjourn

Byerly moved to adjourn the meeting, and Gaska seconded the motion. The motion passed. The meeting ended at 12:48 p.m.

Respectfully submitted,



Bob Selk, Secretary

03.10.2008

Date

Recorder: LP